

**APPENDIX E**  
**AGREEMENT TO INITIATE ASSEMBLED LAND EXCHANGE**

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UNITED STATES OF AMERICA  
DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT  
PALM SPRINGS-SOUTH COAST  
RESOURCE AREA

**AGREEMENT TO INITIATE ASSEMBLED LAND EXCHANGE**  
**BETWEEN THE BUREAU OF LAND MANAGEMENT AND**  
**THE AGUA CALIENTE BAND OF CAHUILLA INDIANS**

This agreement to initiate and complete an assembled land exchange ("Agreement") is made pursuant to Public Law 106-351 and the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. §§ 1701 et seq.), between the Bureau of Land Management ("BLM") on behalf of the United States of America and the Agua Caliente Band of Cahuilla Indians, hereinafter referred to as the Tribe. The BLM and the Tribe are sometimes hereinafter also referred to as a Party or collectively as the Parties.

**RECITALS:**

Whereas, the Parties signed a Memorandum of Understanding (MOU) for acquisition and exchange of lands within the proposed Santa Rosa and San Jacinto Mountains National Monument, dated October 13, 1999 (attached);

Whereas, the above referenced MOU states that the Parties shall jointly identify opportunities within the proposed Monument boundary to exchange BLM administered public lands as referenced in the MOU, for suitable lands outside the reservation boundary.

Whereas, the exchange of lands contemplated by this Agreement also implements portions of the BLM California Desert Conservation Area (CDCA) Plan of 1980, as amended, for the public lands it manages in the Santa Rosa Mountains. The CDCA Plan provides these two objectives involving land exchanges:

1. To provide for use of the public lands and resources including economic, educational, scientific, and recreational uses, in a manner which enhances wherever possible and which does not diminish, on balance, the environmental, cultural, and aesthetic values of the Desert and its productivity; and,
2. Land exchanges, acquisitions, and disposals are necessary for effective and efficient management in the CDCA. Non-federal lands designated in the CDCA Plan as sensitive or unique will require acquisition through exchange or purchases; and

Whereas, the Tribe has or will obtain legal title or control of any Offered Lands and the ability to convey title to such lands in accordance with the laws of the United States and the State of California,

Whereas, BLM has legal title or control of the Selected Lands and has the ability to convey title to such lands; and,

Whereas, each of the Parties desire to complete an exchange of lands as hereinafter described and to establish certain terms and conditions of the exchange.

NOW THEREFORE, the Parties do hereby agree as follows:

**1. DESCRIPTION OF LANDS OR INTEREST IN LANDS BEING CONSIDERED FOR EXCHANGE.**

The Parties agree to enter into land exchange transactions within the boundary of the Santa Rosa and San Jacinto Mountains National Monument.

The Tribe agrees to acquire and convey to BLM available non-Federal lands subject only to the reservations and exceptions shown thereon and which meet US Department of Justice Title Standards. The initial lands which the Tribe intends to seek an option to purchase and convey to the U.S. are shown in Exhibit B. In the event the Tribe is unable to acquire an option to purchase the lands in Exhibit B, the parties agree to work cooperatively to identify additional lands within the National Monument to be acquired and conveyed to the U.S.

The BLM agrees to convey to the Tribe the Federal lands subject only to the reservations and exceptions shown thereon, or required by law. These lands are shown in Exhibit A.

The following rights of way are on the federal lands:

CARI 04966 for Flood Control purposes in sec. 16, T.4S., R.4E., SBM.  
CACA 8568 for parking area in section 36, T.4S., R.4E., SBM.  
CARI 4693 for Water Tank in section 36, T.4S., R.4E., SBM.

All conveyances shall include all of the parties interest in the lands, including but not limited to minerals, timber, grazing use, and water rights, unless those interests are specifically reserved.

**2. EXCHANGE PROCESSING RESPONSIBILITIES.**

Each party will provide survey plats, maps, etc, as appropriate to aid in the identification of the lands to be exchanged.

**The Tribe shall be responsible for the following items:**

1. Providing preliminary title evidence on the non-Federal lands.
2. Arranging for appraisals of the Federal and non-Federal lands, consistent with 43 CFR 2201.3 to be completed by an appraiser under contract to BLM. Appraisals will be completed in stages based on the priorities agreed upon by the parties.
3. Providing the following studies, reports or clearances on the Federal lands:
  - a. Mineral potential
  - b. Cultural resources
  - c. Biological resources, including biological assessments
4. Contributing funds to the BLM to pay exchange processing costs in the absence of a specific federal appropriation to pay such costs.

**The BLM will be responsible for the following processing steps:**

1. Preparing and publishing the Notice of Exchange Proposal (NOEP).

2. Adjudicating the public land records for mining claims, withdrawals, classifications, authorizations, trespasses; and taking actions, when feasible, to allow disposal of the public lands.
3. Consulting with the U.S. Fish & Wildlife Service regarding the exchange of lands.
4. Completing determinations regarding historic properties on the federal lands and, if necessary consulting with the State Historic Preservation Officer.
5. Preparing the appropriate National Environmental Policy Act (NEPA) review for the exchange.
6. Preparing and publishing the Notice of Decision (NOD).
7. Drafting escrow instructions and all documents of conveyance.
8. Maintaining a ledger account tracking the value of lands exchanged.

### **3. HAZARDOUS SUBSTANCES**

Each Party to this Agreement hereby declares that, to their knowledge, that there have been no known or suspected release, storage, or disposal of hazardous substances on the Federal or non-Federal lands in this exchange process. BLM will take whatever steps necessary to determine if hazardous substances are present on the lands involved in an exchange.

### **4. PHYSICAL ACCESS, RIGHT TO ENTER**

Each of the Parties hereby grants permission to the other Party to enter and physically examine the exchange lands. Such examination shall be by non-surface disturbing methods. BLM's inspection of the non-Federal lands also requires the permission of the current owner.

### **5. RELOCATION**

The Tribe certifies there are no tenants occupying the non-Federal lands considered in this process. No relocation benefits will be provided for as described under 49 C.F.R. § 24.101.

### **6. COMPENSATION FOR ASSUMPTION OF COSTS**

The Parties agree to equally share the costs of processing this exchange. The BLM agrees, to the maximum extent permitted, consistent with 43 CFR 2201.1-3 and 2201.6, to compensate the Tribe for completing reports on the federal lands necessary to the exchange, including but not limited to appraisal reports, cultural resource reports, biological resource reports, and mineral potential reports. BLM will compensate the Tribe for these costs by conveying Federal lands equal in value to the non-Federal lands plus the approved assumed costs in an adjustment of relative values.

### **7. ASSEMBLED LAND EXCHANGE.**

The BLM and the Tribe agree to enter into a multiple transaction assembled exchange process. Separate transactions do not need to be of equal value. In accordance with 43 CFR 2201.1, the initial and cumulative difference in value between the Federal lands and non-Federal lands conveyed, as reflected in the ledger account, may not exceed 25% of the total value of the federal lands conveyed. The ledger account must be balanced, equalized and closed with land and/or money within three years of completing the first transaction. Descriptions of the Federal and nonfederal lands proposed for inclusion in this assembled exchange will be developed in phases. Each phase will require a modification to the agreement to initiate an exchange that will identify specific lands.

Subsequent to the NOD, the BLM and the Tribe will enter into individual escrow transactions to transfer the Federal lands to the Tribe and transfer the non-Federal lands to BLM.

BLM will maintain a ledger account to track the values of this assembled land exchange. The ledger account shall be updated after each escrow transaction.

#### **8. CLOSING INDIVIDUAL ESCROWS**

The Tribe and the BLM shall jointly agree on the Federal and non-Federal lands to be part of individual escrow transactions, based on the priority of acquisition of the non-Federal lands.

Title to the Federal lands and non-Federal lands will be transferred simultaneously through escrow procedures with a mutually acceptable title company. BLM will obtain, at Tribes' expense, or the Tribe will provide, binders or commitments to title insurance and pro-forma title insurance policies, to the non-Federal lands, before entering escrow. Escrow instructions will be prepared by the BLM and reviewed and executed by both the BLM and the Tribe.

Decisions to approve or disapprove an exchange proposal are subject to protest for a period of 45 days after publication of the Notice of Decision. Accordingly, individual escrow transactions will not be initiated until any protests and appeals of BLM decisions to approve an exchange have been resolved in accordance with the regulations at 43 CFR 2201.7-1 and part 4.

If no protests are received, individual escrow transactions would normally begin approximately 60 days after the publication of a Notice of Decision for the exchange. If a protest is received, BLM's decision addressing the protest may be appealed to the Interior Board of Land Appeals under the procedures of 43 CFR part 4. If an appeal is filed, the exchange may be further delayed, and BLM may be unable to complete the exchange.

The Tribe shall pay all recording and escrow fees, including the cost of an acceptable title insurance policy to the offered lands. The Tribe may also procure title insurance to the Federal lands at its own expense.

#### **9. TIME FRAME FOR FIRST TRANSACTION**

The parties agree to work cooperatively to process the first exchange transaction in accordance with a tentative schedule shown in Exhibit C. The parties acknowledge that the processing schedule is dependent on the status of negotiations to purchase or secure an option to purchase the non-federal lands.

#### **10. AMENDMENTS**

This Agreement may be amended at any time upon written agreement of the Parties.

#### **11. NON-BINDING NATURE OF AGREEMENT**

Nothing in this agreement obligates the federal government in violation of the Anti-Deficiency Act (Public Law 97-258). The expenditure or advance of any money or the performance of any work by the United States, hereunder, may require appropriation of money by the U.S. Congress or the allotment of funds; this agreement is contingent upon such appropriation or allotment being made, unless an alternative funding source can be identified.

The United States of America is required to process this exchange in accordance with the Federal Land Policy and Management Act of 1976, as amended; the Federal Land Exchange Facilitation Act of 1988; the National Historic Preservation Act of 1966, as amended; the Endangered Species Act of 1973, as amended; the National Environmental Policy Act of 1969; Interior

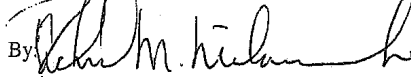
BLM – ACBCI Land Exchange  
Draft Environmental Impact Statement  
Appendix E: Agreement to Initiate Assembled Land Exchange

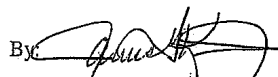
Department Manual 602 DM2; and 43 CFR 2200, which requires certain actions on the part of the United States, such as public notice and consideration of public comments to the exchange proposal. In the event that any exchange considered under this Agreement cannot be completed, no liability or obligation shall accrue to the Tribe or the United States.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate as of the last date shown.

Agua Caliente Band of Cahuilla Indians

Bureau of Land Management

By: 

By: 

Title: CHAIRMAN, TRIBAL COUNCIL

Title: Field Manager

Date: 7/31/02

Date: 8/9/02

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EXHIBIT A  
FEDERAL LANDS PROPOSED FOR EXCHANGE

T.4S., R.4E., section 16, all (public domain)  
section 18, W1/2NE1/4, N1/2NE1/4SW1/4, S1/2 of Lot1, N1/2 of lot2 (Acquired with LWCF in 1993 & 1994 for \$58,800)  
section 36, lots 1-4, W1/2NE1/4, W1/2SE1/4, E1/2SW1/4, SE1/4NW1/4, N1/2SW1/4SW1/4, E1/2NW1/4SW1/4, SW1/4NW1/4SW1/4, S1/2NW1/4NW1/4SW1/4, (public domain),

T.5S., R.4E., section 5, lots 1-4, S1/2NE1/4, S1/2NW1/4, S1/2, (Acquired with LWCF in 1992 for \$123,000)  
section 16, (Public domain)  
sections, 21, 27, & 29, all (Acquired by exchange)  
section 32, all (Acquired with LWCF in 1996 for \$230,000)  
section 36, (Public domain)

Total of approximately 5,783.07 acres

Note: the Master Title Plat (MTP), and Palm Springs Desert Access Guide (DAG) provide conflicting status information in this township. The DAG indicates sections 33 and 35 are National Forest lands, while the MTP and HI show these lands were part of a railroad grant patent in 1906. We have confirmed that these lands were acquired by the Forest Service using LWCF appropriations, but not noted to the HI or the MTP.

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EXHIBIT B  
NON - FEDERAL LANDS

T.5S., R.5E., section 7, (valued in 1992 at \$982,000)  
section 19, (valued in 1992 at \$492,000)  
section 20, W1/2W1/2 (valued in 1992 at \$120,000)

EXHIBIT C  
PROCESSING SCHEDULE

1. December 2001, Agreement to Initiate land exchange to be signed.
2. December 2001, BLM to publish and distribute Notice of Exchange Proposal.
3. January 2001, BLM to initiate discussion with State Historic Preservation Officer (SHPO) regarding data necessary to complete consultation under section 106 of the National Historic Preservation Act.
4. January 2001, BLM to initiate informal consultation with U.S. Fish and Wildlife Service (F&WS).
5. February 2001, based on discussions with SHPO and F&WS, the parties will determine the scope, content and timing of reports.
6. March - July 2002 BLM & Tribe to prepare or contract for reports.
  - May 2002, mineral potential report on federal lands to be provided to BLM for review.
  - May 2002, cultural & biological reports to be provided BLM for review.
  - May 2002 BLM to initiate formal consultation with F&WS.
  - June 2002, appraisal reports to be provided to BLM for review.
  - June 2002 BLM to complete consultation with SHPO.
  - July 2002 BLM to complete environmental site assessments on federal and non-federal lands to be exchanged.
7. September 2002, BLM to complete environmental assessment, publish and distribute Notice of Decision.
8. December 2002, complete first exchange transaction.